

SUBSTITUTE COUNCIL BILL NO. 62175

ORDINANCE NO. 3165

AN ORDINANCE

AMENDING Ordinance No. 3042, providing for a retirement plan with the Joint Municipal Employees' Retirement System of Georgia, by adding a provision to include elected members of the governing body.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MARIETTA, GEORGIA:

Section 1: That Ordinance No. 3042 which provides for a retirement plan with the Joint Municipal Employees' Retirement System of Georgia adopted on September 20, 1973, is hereby amended so as to provide for the inclusion of elected members of the governing authority having at least ten (10) years service as an elected member of the governing authority of said City exclusive of any periods of service as employees.

Section 2: That said benefit shall be \$16.00 per month for each year of service or majority fraction thereof.

Section 3: That all ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed.

Section 4: That this ordinance shall be in full force and effect from and after May 1, 1975.

DATE: June 11, 1975

Approved: *J. Anna Southen*  
Mayor and Council

Attest: *Brian M. Goscha*  
City Clerk

Approved as to Form: \_\_\_\_\_

City Attorney

*Rescinded by  
Ord #3187, 9-10-75*

**A RETIREMENT PLAN**  
**for the Employees of**  
**the City of Marietta, Georgia**

*As Amended thru  
Ord # 3165 - 6-11-75 as  
approved by JMERS -  
10-15-75*

**CONTRACT**

**between the**

**Joint Municipal Employees' Retirement System**

**and the**

**City of Marietta , Georgia**

**consisting of**

- 1. Ordinance of the City of Marietta , Georgia**
- 2. Retirement Plan of the City of Marietta , Georgia**
- 3. Joint Trust Agreement**

## AN ORDINANCE

An Ordinance to amend an Ordinance approved September 20, 1973, as amended, establishing a retirement plan for the employees of the City of Marietta, Georgia and setting forth the joint trust agreement and the contract for the administration of said plan by the City and the Joint Municipal Employees' Retirement System as provided by Ga. L. 1965, p. 421, as amended, so as to provide for the inclusion of elected and appointed members of the governing authority formerly excluded from participation until amendment of pertinent Georgia Laws; to repeal conflicting ordinances; and for other purposes.

BE IT ORDAINED by the Governing Authority of the City of Marietta, Georgia and it is hereby ordained by the authority thereof:

Section 1. An Ordinance establishing a retirement plan for the employees of the City of Marietta, Georgia and setting forth the joint trust agreement and the contract for the administration of said plan by the City and the Joint Municipal Employees' Retirement System as provided by Ga. L. 1965, p. 421, as amended, is hereby amended by striking in their entirety Articles I through XV of the Plan and Articles I through XI of the Joint Trust Agreement and by substituting in lieu thereof the following new Articles I through XV of the Plan and Articles I through XI of the Joint Trust Agreement.

Section 2. The rights and obligations under the Plan with respect to persons whose employment with the City was terminated

for any reason whatsoever prior to the effective date of this amendment are fixed and shall be governed by such Plan as it existed and was in effect at the time of such termination.

Section 3. The effective date of this Ordinance shall be May 1, 1975, and ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

ORDAINED this 11th day of June, 19 75 .

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## ARTICLE I

This Ordinance shall constitute the Retirement Plan of the City of Marietta , Georgia for the exclusive benefit of the City Employees according to the terms and conditions hereinafter contained; and when accepted and executed by the authorized officer of JMERS, shall also constitute the Contract between the City and said JMERS, all as authorized and provided by Ga. L. 1965, p. 421, as amended; and said Ordinance and Contract shall be subject to amendment from time to time by the City and by subsequent amendment of the Act above referred to.



## ARTICLE II. DEFINITIONS

The following words and phrases as used in this Ordinance, unless a different meaning is clearly required by the context, shall have the following meanings:

- Section 1. Retirement System, System, or JMERS shall mean the Joint Municipal Employees' Retirement System created by Ga. L. 1965, p. 421, as amended.
- Section 2. Board of Trustees, Board shall mean the Board of Trustees of the Joint Municipal Employees' Retirement System.
- Section 3. Contract shall mean the entire contents of this Ordinance, Plan, and Joint Trust Agreement and any amendments made hereafter.
- Section 4. JMERS Investment Fund shall mean the total amounts of all Contributions plus Interest, invested or uninvested, held by the Board of Trustees for all JMERS member municipalities and their Employees where applicable.
- Section 5. Trust Fund shall mean the total amounts, invested or uninvested, held at any time by JMERS in trust for the City under the Joint Trust Agreement attached hereto and denoted as Appendix A.

**Section 6. Plan**

shall mean the provisions of this Ordinance setting forth the Employees to be covered, the benefits to be provided, and the conditions of retirement and all amendments thereto which may hereafter be made, all shall be known as Retirement Plan for the Employees of the City of Marietta, Georgia.

**Section 7. Plan Year**

shall mean each twelve (12) month period ending on the day immediately preceding each November 1.

**Section 8. City, Town, Member Municipality or Employer**

shall mean the City of Marietta, Georgia.

**Section 9. Governing Authority**

shall mean the Mayor and Council of the City of Marietta, Georgia.

**Section 10. Pension Committee**

shall mean the committee appointed by the City in this Ordinance to represent the City in the administration of the Plan hereby established.

**Section 11. Effective Date of the Plan**

shall mean November 1, 1973.

**Section 12. Enrollment Date**

shall mean the date that an Eligible Employee or an elected or appointed member of the Governing Authority becomes a Participant under this Plan. Said date will be established by the

Pension Committee on a form provided for that purpose.

**Section 13. Employee**

shall mean any person who is regularly employed in the services of the City or any person who is an elected or appointed member of the Governing Authority.

**Section 14. New Employee**

shall mean any Employee regularly employed in the services of the City after the Effective Date of the Plan except as otherwise provided for in Article III, Section 3.

**Section 15. Full-Time Employee**

shall mean an Employee who works at least thirty (30) hours per week.

**Section 16. Eligible Employee**

shall mean any Full-Time Employee who comes within the provisions of Article III, Section 2, and who is not an Ineligible Employee as defined herein.

**Section 17. Ineligible Employee**

shall mean any Employee in the class or classes enumerated in Article III, Section 1.

**Section 18. Contributions**

shall mean payments made to JMERS to provide the benefits specified in the Plan.

**Section 19. Interest**

shall mean a pro rata share of any and all interest, dividends, and/or capital

gains or losses earned on the invested or reinvested funds of the JMERS Investment Fund.

**Section 20. Participant or Participating Employee**

shall mean any Eligible Employee or elected or appointed member of the Governing Authority who complies with the requirements of Article III, Section 4.

**Section 21. Retired Participant**

shall mean any Participant who has qualified for Retirement under any provision of the Plan and is entitled to receive any pension provided under the Plan.

**Section 22. Terminated Participant**

shall mean Employees withdrawn from Service who have Vested benefits under any provision of the Plan.

**Section 23. Service**

shall mean regular service rendered as an Employee of the City. Service includes absence from active employment with the City under conditions which are not treated by it as a termination of employment. Service also means any tenure of elective office held by an elected or appointed member of the Governing Authority provided that such tenure of elective office does not include any calendar period during which

any elected or appointed member of the Governing Authority is also in the regular service of the City as a Full-Time Employee.

**Section 24. Past Service**

shall mean the number of years and complete months, determined by the Employer to represent uninterrupted Service of a Participant in the employment of the City prior to his Enrollment Date.

Past Service shall also mean any tenure of elective office of an elected or appointed member of the Governing Authority who is on the effective date of this amendment serving as either an Eligible Employee or as an elected or appointed member of the Governing Authority or both. Otherwise, Past Service shall not include any tenure of elective office as an elected or appointed member of the Governing Authority.

**Section 25. Credited Past Service**

shall mean the number of years and complete months of Past Service creditable for the purpose of computing pensions hereunder as prescribed in Article V, Section 1b(1).

**Section 26. Credited Future Service**

shall mean the number of years and complete months, determined by the Employer, to represent uninterrupted credited Service of a Participant from his Enrollment Date in the Plan to the effective date of his Retirement as prescribed in Article V, Section 1b(2).

**Section 27. Total Credited Service**

shall mean the sum of Credited Past Service and Credited Future Service, as defined herein, of a Participant, but shall be limited to such maximum number of years, if any, as may be prescribed in Article V, Section 1b(3).

**Section 28. Earnings**

shall mean the total normal compensation paid to a Full-Time Employee of the City for Service rendered but shall exclude compensation for overtime, reimbursed expenses, and other unusual compensation. In all cases, earnings shall include holiday and vacation pay and payments made by the City on behalf of an Employee during period of authorized absence for illness and other reasons.

**Section 29. Annual Earnings**

shall mean the Earnings, as determined by the Employer, which have been paid

to a Participant on account of Service rendered during any consecutive twelve (12) calendar month period immediately preceding the anniversary of his Retirement Date. It shall be limited to such maximum amount, if any, as may be prescribed in Article V, Section 1b(5), of the Plan.

**Section 30. Final Average Earnings**

shall mean the average Annual Earnings computed in accordance with the provisions of Article V, Section 1b(4), of the Plan.

**Section 31. Retirement**

shall mean withdrawal from Service with a retirement allowance granted under the provisions of the Plan. The City may engage on a retainer or fee basis any person receiving benefits hereunder and such engagement will not terminate or suspend such benefits.

**Section 32. Normal Retirement Date**

shall mean the first day of the month coinciding with or next following the day a Participant qualified for Retirement as provided in Article IV, Section

**Section 33. Early Retirement Date**

shall mean the first day of the month coinciding with or next following the day a Participant qualified for Retirement

**Section 34. Normal Retirement Age**

ment as provided in Article IV, Section  
shall mean age fifty-five (55) for  
Class 1 Employees and age sixty-five  
(65) for Class 2 Employees as defined in  
Article III, Section 2.

**Section 35. Early Retirement Age**

shall mean age forty-five (45) for  
Class 1 Employees and age fifty-five  
(55) for Class 2 Employees as defined in  
Article III, Section 2.

**Section 36. Monthly Retirement Benefit**

shall mean the monthly pension as pro-  
vided in Article V or any optional ben-  
efit payable in lieu thereof as pro-  
vided in Article VI or any death or ter-  
mination benefit payable under the pro-  
visions of Article VII.

**Section 37. Beneficiary**

shall mean the person designated by a  
Participant from time to time in  
writing and on prescribed forms, to  
receive any death benefit.

**Section 38. Beneficiary  
Prior to Retirement**

shall mean the one person designated  
by the Participant from time to time,  
in writing and on prescribed forms,  
to receive any death benefit provided  
by Article VII, Section 1.



**Section 39. Beneficiary in Retirement**

shall mean the person designated by a Participant, in writing and on prescribed forms, to receive any death benefit provided for a Beneficiary after Retirement of a Participant in Article VI, Sections 2 and 4 and/or Article VII, Section 2.

**Section 40. Joint Annuitant**

shall mean the person designated by the Participant from time to time in writing on prescribed forms to receive the death benefit provided for a Joint Annuitant in Article VI, Sections 2 and 3 and/or Article VII, Section 2b.

**Section 41. Actuary**

shall mean an individual, or firm, appointed or approved by JMERS to perform actuarial calculations necessary in the funding of the Plan.

**Section 42. Actuarial Equivalent**

shall mean a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the Board of Trustees.

**Section 43. O.A.S.D.I.**

shall mean the federal old age, survivors, and disability insurance benefits under the Social Security Act and any amendments thereto.

**Section 44. Vesting, Vested Right, Vested Benefit**

shall mean the rights of a Terminated Participant as specified in Article VII, Sections 3 and 4, of the Plan.

**Section 45. Covered Compensation**

shall mean the amount listed in the Covered Compensation Table, Article V, Section 7, opposite the year of birth of any Participant. It is further defined as the amount of compensation which O.A.S.D.I. benefits would provide for an employee under the Social Security Act if his annual compensation for each year until he reaches age sixty-five (65) has been and will continue to be at least equal to the maximum amount of earnings for which taxes are payable under the Social Security Act.

**Section 46. Disability**

shall mean a physical or mental disability of a Participant who because of such disability becomes entitled to receive disability insurance benefits under Title II of the Federal Social Security Act; provided, however, that such Disability shall not have been (a) self-inflicted, (b) incurred in military service, (c) incurred in the commission of a felonious enterprise, or (d) the result of the use of nar-

**Section 47. Disability Retirement Date**

cotics or drugs or habitual alcoholism. shall mean the first day of the first calendar month in which a Participant becomes entitled to receive disability insurance benefits under Title II of the Federal Social Security Act. However, in no event shall said Disability Retirement Date be earlier than one (1) calendar month following his termination of employment due to a Disability.

**Section 48. Current Average Cost-of-Living Index Figure**

shall mean, as of any date, the average of the August monthly Consumer Price Index figures, relative to the United States as a whole, most recently issued as of such date by the Bureau of Labor Statistics of the United States Department of Labor. Should the monthly Consumer Price Index be revised by the Bureau of Labor Statistics, it shall mean the average adjusted by the Pension Committee, with the advice of the actuary of the Plan, so as to give effect to such revision in an equitable manner.

**Section 49. Cost-of-Living Base Figure**

shall mean the Current Average Cost-of-Living Index Figure of a Participant as of his actual Retirement date or

any subsequent annual adjustment date.  
The Cost-of-Living Base Figure for  
beneficiaries receiving pensions shall  
be the Current Average Cost-of-Living  
Index Figure beginning on the annual  
adjustment date following such benefi-  
ciary's entitlement to a pension or  
any subsequent annual adjustment date.

### ARTICLE III. ELIGIBILITY, QUALIFICATION AND PARTICIPATION

Section 1. Ineligible Classes of Employees. The following classes of Employees shall not become eligible for participation in the Plan.

CLASS 1 - Employees, other than elected and appointed members of the Governing Authority, who regularly work less than thirty (30) hours per week in the Service of the City.

CLASS 2 - Any person employed by the City to perform scientific, technical, engineering, accounting, legal, or similar expert services in a consulting capacity.

CLASS 3 - Any person employed for less than six (6) months in any year, or on a retainer or fee basis.

Section 2. Eligible Classes of Employees. The following classes of Employees who are not excluded by Article III, Section 1, shall qualify for participation by meeting the pertinent requirements set forth in Article III, Section 3.

CLASS 1 - Permanent policemen and firemen.

CLASS 2 - All other Full-Time Employees, and elected and appointed members of the Governing Authority.

Section 3. Qualifications for Participation.

a. Each Employee, other than elected and appointed members of the Governing Authority, who is, on the Effective Date of the Plan,

regularly employed in the Services of the City shall be qualified to apply for participation in the Plan:

(1) If he has completed one (1) year of continuous Service on or prior to the Effective Date of the Plan, or

(2) On the first day of the month immediately following or coinciding with the date subsequent to the Effective Date of the Plan that he completes one (1) year of continuous Service provided that the period of Service between the Effective Date of the Plan and his Enrollment Date was continuous and uninterrupted.

b. Each New Employee hired after the Effective Date of the Plan shall be eligible to participate in the Plan on the first day of the month immediately following or coinciding with the date he completes one (1) year of continuous Service; provided, however, that he has not attained age ~~fifty-six~~ (56), or age forty-six (46) if such Employee is employed as a permanent policeman or fireman, whichever is applicable.

c. Any Eligible Employee hired after the Effective Date of the Plan, whose immediate prior employment was with another city in the JMERS and who was a Participant in that city's plan, shall be allowed to become a Participant on the first day of the month coinciding with or next following the month in which he is employed, regardless of any other requirements in Article III, Section 3.

d. Any Eligible Employee whose employment terminates and who later resumes employment in an Eligible Employee class shall be considered a New Employee as of his date of reemployment unless he meets one of the following conditions:

(1) A former Participant who is reemployed in an Eligible Employee class within one (1) year after termination of his employ-

ment with the City may resume participation on the first day of the month immediately following or coinciding with his reemployment, but the time he was absent shall not be taken into account for the purpose of calculating retirement or termination benefits under the Plan.

(2) A former Participant who is reemployed in an Eligible Employee class more than one (1) year after his date of termination and who spent the interim time in the continuous employment of another city in the JMERS may resume participation on the first day of the month coinciding with or next following the month in which he is reemployed, but the time he was absent shall not be taken into account for the purpose of calculating retirement or termination benefits under the Plan.

(3) A former Participant who is reemployed in an Eligible Employee class after a period of involuntary service in the Armed Forces of the United States, and who meets the provisions of Article III, Section 4d, may resume participation on the first day of the month coinciding with or next following the month in which he is reemployed, but the time he was absent shall not be taken into account for the purpose of calculating retirement or termination benefits under the Plan unless otherwise authorized by the Governing Authority.

(4) A former Participant who is reemployed in an Eligible Employee class after being on an authorized leave of absence and who meets the provisions of Article III, Section 4d, may resume participation on the first day of the month coinciding with or next following the month in which he is reemployed in accordance with the terms of the leave as approved by the Governing Authority.

e. Each elected or appointed member of the Governing Authority who holds an elected office of the City on the effective date of this amendment shall be qualified to apply for participation on such effective date. Each other elected or appointed member of the Governing Authority who holds an elective office of the City sub-



sequent to the effective date of this amendment shall be qualified to apply for participation in the Plan on the first day of the month immediately following or coinciding with the first date he occupies any elective office of the Governing Authority after the effective date of this amendment.

#### Section 4. Participation.

a. Each Eligible Employee who meets the qualifications for participation as set forth in Article III, Section 3, shall become a Participant in the Plan by filing with the Pension Committee, on a prescribed form, such information as shall be required by the Pension Committee, which shall include the Employee's acceptance of the terms and conditions of the Plan.

b. Participation in the Plan shall not give any Eligible Employee the right to be retained in the employ of the City nor, upon dismissal, to have any right or interest in the Trust Fund other than is herein provided.

c. For other than elected and appointed members of the Governing Authority, participation shall be deemed to be automatically terminated by a quit, resignation or discharge, by lapse of recall rights after layoff, by ceasing to be an Eligible Employee as defined herein, or by failure to return to Service as an Eligible Employee at the end of an approved leave of absence. Participation shall be deemed to be automatically terminated for an elected or appointed member of the Governing Authority upon vacation of elective office.

d. The Governing Authority shall determine the date of expiration of any leave of absence granted to a Participant, other than an elected or appointed member of the Governing Authority, and if such Participant has not returned to his regular employment as an

Eligible Employee in accordance with such determination, his interest, if any, under the Plan shall only be such as existed at the commencement of such leave of absence. If a leave of absence has been or is granted to a Participant other than an elected or appointed member of the Governing Authority for the purpose of involuntary service in the Armed Forces of the United States or for some other purpose as approved by the Governing Authority, he shall for the purposes of the Plan not be deemed to have broken continuity of Credited Future Service (but such periods of absence shall not be counted as Credited Future Service for the purpose of computing a pension hereunder unless the leave, as authorized by the Governing Authority, specifically permits such Participant to continue accumulating Credited Future Service during the authorized leave of absence) provided:

(1) Such a Participant was regularly employed by the City immediately prior to his leave of absence, and

(2) He makes application for reemployment on or before the date of expiration of any leave of absence or within ninety (90) days after he first becomes entitled to his discharge or release from involuntary service in the Armed Forces of the United States, and

(3) He is reemployed as an Eligible Employee within ninety (90) days after such application.

f. Each elected or appointed member of the Governing Authority who meets the qualifications for participation in the Plan as set forth in Article III, Section 3, shall become a Participant in the Plan by filing with the Pension Committee, on a prescribed form, such information as shall be required by the Pension Committee, which shall include the member's acceptance of the terms and conditions of the Plan.

## ARTICLE IV. RETIREMENT ELIGIBILITY AND DATES

### Section 1. Retirement Eligibility.

a. The Retirement prerequisites of a Participant under this Plan are contingent upon the method of Retirement selected by such Participant; that is, Normal Retirement, Early Retirement, Delayed Retirement, or Disability Retirement; and whether or not such Participant is a Full-Time Employee. The prerequisites associated with each Retirement method or employment status shall be as specified below in pertinent provisions of Sections 2, 3, 4, 5, and 6, respectively, of this Article IV.

b. Retirement under the Plan is contingent upon the satisfactory completion of a prescribed form provided for such purpose and the acceptance of the Retirement application by the Pension Committee.

c. Retirement applications shall be prepared and submitted at such time as to reach the office of JMERS no earlier than ninety (90) days and no later than thirty (30) days prior to a Participant's effective Retirement date.

### Section 2. Normal Retirement Date.

a. Except as otherwise provided in Section 4a(2) of this Article IV, the Normal Retirement Date of a Participant shall be the first day of the month coinciding with or next following the date he has attained:

(1) Age fifty-five (55) for Class 1 Employees as defined in Article III, Section 2.

(2) Age sixty-five (65) for Class 2 Employees as defined in Article III, Section 2, who are Full-Time Employees.

(3) Age sixty-five (65) and has completed a minimum of

ten (10) years of Total Credited Service for Class 2 Employees, as defined in Article III, Section 2, who are elected or appointed members of the Governing Authority.

b. A Participant shall retire from the employment of the City on his Normal Retirement Date except as otherwise provided in Sections 3, 4, 5, and 6, of this Article IV.

Section 3. Early Retirement Date. A Participant may retire from the Service of the City on the first day of any month prior to his Normal Retirement Date, provided he has a minimum of ten (10) years of Total Credited Service and has attained age forty-five (45) if such Participant is a Class 1 Employee, or age fifty-five (55) if such Participant is a Class 2 Employee, as defined in Article III, Section 2.

Section 4. Delayed Retirement Date.

a. A Participant other than an elected or appointed member of the Governing Authority may continue employment with the City beyond the Normal Retirement Age under any one of the following conditions:

(1) If such Participant has completed ~~ten~~ (10) years of Total Credited Service under the Plan when he attains the Normal Retirement Age, he may continue employment with the City by receiving special permission from the Governing Authority. Upon actual Retirement he shall receive the Delayed Retirement Benefit provided in Article V, Section 3.

(2) If such Participant has not completed ~~ten~~ (10) years of Total Credited Service under the Plan when he attains the Normal Retirement Age, he has the option to retire with his accrued Monthly Retirement Benefit at that date, or continue his employment until the

earlier of:

(a) Completion of ~~ten~~ <sup>5</sup> (10) years of Total Credited Service at which time he would continue employment only with special permission from the Governing Authority, or

(b) Attainment of age sixty-five (65) if such Participant is a Class 1 Employee, or age seventy (70) if such Participant is a Class 2 Employee, as defined in Article III, Section 2.

(c) If such Participant does not elect to retire at the Normal Retirement Age, (a) or (b) above shall become his Normal Retirement Date and upon actual Retirement he shall receive the Retirement benefit for which he became eligible at the occurrence of (a) or (b) above.

b. Subsequent to the first anniversary of the Effective Date, Retirement may not be delayed beyond age sixty-five (65) for a Participant who is a Class 1 Employee, or age seventy (70) for a Participant who is a Class 2 Employee, as defined in Article III, Section 2

Section 5. Disability Retirement Date. A Participant may retire under the provisions of the Plan on the first day of the first calendar month in which a Participant becomes entitled to receive disability insurance benefits under Title II of the Federal Social Security Act regardless of any age or service restrictions otherwise contained herein. Upon actual Retirement, such Participant shall receive the Disability Retirement Benefit provided in Article V, Section 4, or any other Retirement Benefit granted under the Plan for which he is eligible if such benefit is greater than the afore-said Disability Retirement Benefit. However, under no circumstances shall any Retired Participant be entitled at one time to more than one type of Retirement benefit granted under the Plan.

**Section 6. Elected and Appointed Members of the Governing Authority.**  
If an elected or appointed member of the Governing Authority is holding an elective office of the Governing Authority when he becomes eligible for Normal Retirement as provided in this Article IV, Section 2a(3), his Retirement shall be delayed until the first day of the month coinciding with or next following the date he vacates such elective office.

## ARTICLE V. RETIREMENT BENEFITS

### Section 1. Normal Retirement Benefit.

a. A Participant, upon Retirement on his Normal Retirement Date, shall receive a Monthly Retirement Benefit under which payments shall commence on the first day of the month following his Normal Retirement Date and shall be payable on the first day of each month thereafter during his lifetime. The amount of the Monthly Retirement Benefit for Service rendered as an Eligible Employee of the City shall be determined as one-twelfth (1/12) of the sum of (1) and (2) below. The amount of the Monthly Retirement Benefit for Service rendered as an elected or appointed member of the Governing Authority exclusive of any periods of Service as an Eligible Employee shall be sixteen dollars (\$16.00) for each year of Credited Service or major fraction thereof.

(1) Past Service - One percent (1%) of the Final Average Earnings up to the amount of Covered Compensation for the Participant's applicable year of birth in the Table included in Article V, Section 4, plus one and three-fourths percent (1 3/4%) of Final Average Earnings in excess of the Covered Compensation applicable to the Participant, multiplied by total years of Credited Past Service.

(2) Future Service - One percent (1%) of the Final Average Earnings up to the amount of Covered Compensation for the Participant's applicable year of birth in the Table included in Article V, Section 4, plus one and three-fourths percent (1 3/4%) of Final Average Earnings in excess of the Covered Compensation applicable to the Participant, multiplied by total years of Credited Future Service

b. The following provisions shall apply to the calculation of

a. above:

(1) Credited Past Service.

(a) Credited Past Service shall be the amount of Past Service of a Participant. Breaks in regular full-time employment prior to the Effective Date of the plan followed by five (5) years of Service or leave of absence will not break continuity of Service but the time absent will not be considered as a period of Credited Past Service.

(b) Any Eligible Employee or any elected or appointed member of the Governing Authority who does not elect to become a Participant as of the date he is first qualified to do so may elect to become a Participant on the first day of any succeeding month; provided, however, that the Credited Past Service of such Participant shall not include the period of Service from the date he was first qualified to become a Participant to the date he elects to become a Participant, or any creditable Past Service due him on the date he was first qualified to become a Participant under the Plan; and, further provided that, except for elected and appointed members of the Governing Authority, he has enough time remaining until Normal Retirement Age to accrue at least ten (10) years of Total Credited Service.

(2) Credited Future Service shall be as defined in Article II, Section 27, and limited to time spent as a Participant in the Service of the City, except as provided in Article III, Section 4d. Breaks in any tenure of elective office of an elected or appointed member of the Governing Authority will not break continuity of Service but the time absent will not be considered as a period of Credited Future Service.



(3) Total Credited Service, both past and future, shall be the sum of Credited Past and Credited Future Service. The amount of Total Credited Service for any Participant shall be unlimited except that:

(a) No credit will be given for Service performed as an Eligible Employee of the City which precedes a Participant's most recent date of employment as a New Employee; and

(b) Total Credited Service shall not exceed the total calendar years and complete months during which a Participant was either an Eligible Employee or an elected or appointed member of the Governing Authority or both.

(4) Final Average Earnings shall mean the average of the Annual Earnings paid to a Participant during any consecutive ~~five~~<sup>3</sup> (5) year period preceding his actual date of Retirement in which his Earnings were highest; or if he had less than ~~five~~<sup>3</sup> (5) years of Total Credited Service, then his Final Average Earnings shall be his average Earnings for his Total Credited Service.

(5) Maximum Annual Earnings to be used for computing Final Average Earnings shall be unlimited.

(6) Final Average Earnings as defined in subparagraph (4) above shall be used for computing the Monthly Retirement Benefit except as herein otherwise provided.

(7) Full months of Credited Past and Future Service shall be treated as fractions of one (1) year. Partial months shall not be included in the calculation.

Section 2. Early Retirement Benefit. A Participant, upon Retirement on his Early Retirement Date, shall, at his election, receive either:

a. An immediate Monthly Retirement Benefit under which payment

shall commence on the first day of the month following the Participant's Early Retirement Date and shall be payable on the first day of each month thereafter during the lifetime of the Participant. The amount of each Monthly Retirement Benefit shall be computed in the same manner as for a Normal Retirement Benefit, but based upon Total Credited Service, and in the case of an Eligible Employee upon his Annual Earnings, up to the Participant's Early Retirement Date, and the benefit so computed shall be reduced on an Actuarially Equivalent basis in accordance with tables and rules in use by JMERS at that time; or

b. A delayed Monthly Retirement Benefit under which payment shall commence on the first day of the month coinciding with or next following the Retired Participant's fifty-fifth (55th) birthday if such Participant is a Class 1 Employee, or sixty-fifth (65th) birthday if such Participant is a Class 2 Employee, as defined in Article III, Section 2, and shall be payable on the first day of each month thereafter during the lifetime of the Participant. The amount of each Monthly Retirement Benefit shall be computed in the same manner as for a Normal Retirement Benefit, but based upon Total Credited Service, and in the case of an Eligible Employee upon his Annual Earnings, up to the Participant's Retirement Date.

Section 3. Delayed Retirement Benefit. The Delayed Retirement Benefit shall be calculated in the same manner as the Normal Retirement Benefit, and in the case of Class 1 Employees as defined in Article III, Section 2, increased actuarially due to the Participant's actual age at Retirement. In determining the Delayed Retirement Benefit, Total Credited Service shall include the sum of Credited Past Ser-

vice and Credited Future Service accruing after the Normal Retirement Age.

Section 4. Disability Retirement Benefit. The amount of the Disability Retirement Benefit shall be calculated in the same manner as the Normal Retirement Benefit with no actuarial reduction for age imposed. In no event, however, will a Participant's Disability Retirement Benefit be less than twenty percent (20%) of his average monthly Earnings for the twelve (12) calendar month period immediately preceding his termination of employment as a result of a Disability. Upon Retirement on his Disability Retirement Date, a Participant shall receive a Monthly Retirement Benefit commencing on the first day of the month coinciding with his Disability Retirement Date and payable on the first day of each month thereafter so long as his Disability continues.

Section 5. Cost-of-Living Adjustment.

a. The amount of the Benefits payable under this Plan to a Participant classified as a Class 1 Employee as defined in Article III, Section 2, or his Beneficiary, shall be adjusted by the Current Average Cost-of-Living Index Figure as provided herein.

b. The Current Average Cost-of-Living Index Figure shall be ascertained as of October 1 in each year.

c. Each Monthly Retirement Benefit then being received shall thereupon be adjusted as follows:

(1) Each Monthly Retirement Benefit shall be increased by a percentage equal to the percentage representing the Current Average Cost-of-Living Index Figure divided by each recipient's Cost-of-Living Base Figure. If the Current Average Cost-of-Living Index

Figure is less than the Average Cost-of-Living Index Figure determined on October 1 of the previous calendar year, no reduction in the Monthly Retirement Benefit shall be effected.

(2) Notwithstanding the foregoing provisions, no increase in the amount of a Monthly Retirement Benefit due to changes in the Current Average Cost-of-Living Index Figure effective at any annual adjustment date (October 1) shall be in excess of an average increase of four percent (4%) of the amount of the Monthly Retirement Benefits payable immediately prior to such Participant's or Beneficiary's applicable adjustment date.

#### Section 6. Suspension of Benefits.

a. Any Retirement pension payable under this Plan to any Participant who shall have retired or been retired pursuant to any provisions of Article IV or whose Service with the City shall have terminated on or after his Vesting date shall be suspended as of the date he is reemployed by the City or holds an elective office of the Governing Authority except as otherwise provided herein and shall be resumed as of the first day of the month coinciding with or next following his subsequent Retirement. In any case where the payment of a Participant's Retirement pension shall have been so suspended, the Retirement pension payable on his subsequent Retirement (whether before or after his Normal Retirement Date) shall be the benefit computed in accordance with this Article V on the basis of his aggregate Credited Service, and for an Eligible Employee on the basis of his Final Average Earnings, at the time of his subsequent Retirement, but reduced on an actuarial basis by the value of any Early Retirement Benefits received by him prior to being reemployed as an Eligible Employee or return to elective office, ex-

cept that the resulting benefit shall not be less than the benefit payable at the time of his previous Retirement. The designation of such Participant's Beneficiary in Retirement shall not be affected by the provisions of this Section. For the purposes of this Section 6, any such Participant's Credited Service subsequent to his re-employment by the City or holding of an elective office of the Governing Authority shall commence as of the date of his reemployment as an Eligible Employee or as of the date his term of elective office begins, whichever is applicable.

b. Any Disability Retirement pension payable under this Plan to any Participant who shall have retired or been retired pursuant to any provisions of Article IV, Section 5, shall be suspended as of the date His Disability ceases. In any case where the payment of a Participant's Disability Retirement pension shall have been so suspended, said period of absence from employment due to such Disability shall be treated as a leave of absence without pay and the provisions of Article III, Section 4 shall apply except that such period of absence shall not be counted as Credited Future Service. Any Participant who shall have retired or been retired pursuant to the provisions of Article IV, Section 5 and who dies or who has been or shall be subsequently declared ineligible for a Disability Retirement benefit because of a cessation of said Disability shall have a right to any benefit afforded under any other provision of this Plan to which he or his Beneficiary might otherwise be entitled. In such a case any Disability Retirement payments made prior to the date his Disability ceases or is declared to no longer exist shall be retained by the retiree and disregarded in computing any other benefit payable under this Plan.

**Section 7. Covered Compensation Table.**

**COVERED COMPENSATION TABLE**

Year of Birth	Covered Compensation Amount	Year of Birth	Covered Compensation Amount	Year of Birth	Covered Compensation Amount
1903 or earlier	\$4,944	1916	\$6,432	1929	\$6,900
1904	5,160	1917	6,480	1930	6,984
1905	5,352	1918	6,528	1931	7,080
1906	5,520	1919	6,576	1932	7,176
1907	5,652	1920	6,612	1933	7,260
1908	5,784	1921	6,660	1934	7,332
1909	5,892	1922	6,696	1935	7,416
1910	6,000	1923	6,720	1936	7,500
1911	6,084	1924	6,756	1937	7,572
1912	6,168	1925	6,792	1938	7,656
1913	6,240	1926	6,816	1939	7,728
1914	6,312	1927	6,840	1940	7,764
1915	6,372	1928	6,864	1941 or later	7,800

## ARTICLE VI. OPTIONAL FORMS OF RETIREMENT INCOME

Section 1. Election of Optional Retirement Benefits. A Participant may elect, or may revoke a previous election and make a new election, at any time prior to his actual retirement date, to have his retirement benefit payable under one of the options hereinafter set forth in lieu of the retirement benefit he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of such option elected. Election of any option shall be made by the Participant in writing and shall be subject to approval by JMERS.

Section 2. Description of Options. The amount of any optional retirement benefit set forth below shall be the Actuarial Equivalent of the amount of benefit that would otherwise be payable to the Participant under Article V.

OPTION A: Joint and Survivor Option. A decreased retirement benefit which shall be payable during the lifetime of the Participant and, if his Joint Annuitant should survive him, shall continue after his death during the lifetime of his Joint Annuitant in the same amount or in such smaller amount as the Participant may designate. If the Joint Annuitant does not survive the Participant, all payments shall cease at the death of the Participant and no further benefits will accrue to his estate or to other persons except as provided in Article VII, Section 2. This option shall be known as Option A.

OPTION B: Period Certain and Life Option. A decreased retirement benefit payable monthly to the Participant during his lifetime and in the event of his death within a period of five (5), ten (10), fifteen (15), or twenty (20) years after his Retirement, the

same monthly amount shall be payable for the balance of such period to a Beneficiary in Retirement designated by him. If the Beneficiary in Retirement does not survive the Participant all payments shall cease at the death of the Participant and no further benefits will accrue to his estate or to other persons except as provided in Article VII, Section 2. This option shall be known as Option B.

OPTION C: Social Security Option. An increased retirement benefit payable to the Participant during his lifetime until his retirement benefits commence under O.A.S.D.I. and a decreased retirement benefit payable thereafter for life in order to have a more level retirement income when such decreased retirement benefit is added to his primary benefits under O.A.S.D.I. determined as of his Early Retirement Date. At the death of the Participant all payments will cease and no further benefits will accrue to the estate of the Participant or to other persons except as provided in Article VII, Section 2. This option shall be known as Option C.

Section 3. Joint Annuitant. A Participant who elects Option A shall, on a form provided for that purpose, designate a person to receive benefits which continue to be payable upon the death of the Retired Participant. Such person shall be the Joint Annuitant of the Participant.

Section 4. Beneficiary in Retirement. A Participant who elects Option B shall, on a form provided for that purpose, designate a person to receive benefits which will continue to be payable upon the death of the Retired Participant within a specified period after his Retirement.



Section 5. Cancellation of Election. The election by a Participant of any option in Section 2 of this Article VI shall be null and void if either the Participant or his designated Joint Annuitant or Beneficiary in Retirement shall die before benefits commence.

## ARTICLE VII. DEATH OR TERMINATION OF EMPLOYMENT

### Section 1. Death Prior to Retirement.

a. If the employment or term of elective office of a Participant is terminated by reason of his death prior to his Retirement in accordance with the provisions of Article IV, there shall be payable to his designated Beneficiary a monthly death benefit actuarially equivalent to the reserve required for the Participant's anticipated normal Retirement benefit assuming that his age at the time of his death is fifty-five (55) if he is a Class 1 Employee, or sixty-five (65) if he is a Class 2 Employee, as defined in Article III, Section 2, and that the Total Credited Service used to calculate the Participant's anticipated Normal Retirement benefit shall include the amount of Credited Service accrued prior to the date of the Participant's death plus one-half (1/2) of the Service between such date of death and what would otherwise have been the Participant's Normal Retirement Date. In no event shall the amount of Total Credited Service exceed the sum of the actual Service performed plus ten (10) calendar years.

b. Designation of a Beneficiary Prior to Retirement may be changed by the Participant in writing at any time prior to actual Retirement on a form provided for that purpose. Only the last such designation of a Beneficiary Prior to Retirement will have effect and any new designation of a Beneficiary Prior to Retirement invalidates, supersedes, and revokes any prior designation.

Section 2. Death After Retirement. Upon the death of a Participant subsequent to his Retirement in accordance with Article IV, Sections 1, 2, 3, 4, 5, or 6, there shall be payable to the Partici-

pant's designated Beneficiary, Beneficiary in Retirement, or Joint Annuitant a benefit to be determined as follows:

a. If the Participant has not elected an optional form of payment, as provided in Article VI, or if he has elected an optional form of payment and his designated Joint Annuitant or Beneficiary in Retirement does not survive him, no further payment of any kind whatsoever shall be made at the death of the Participant unless he shall die before the sum of the pension payments paid to him after Retirement equals or exceeds the amount of his accumulated contributions in which case the balance will be paid in a lump sum to his designated Beneficiary or estate.

b. If the Participant has elected an optional form of payment as provided in Article VI and his designated Joint Annuitant or Beneficiary in Retirement survives him, benefits shall be payable to the Joint Annuitant or Beneficiary in Retirement as provided in the Option elected.

### Section 3. Termination of Employment Before Retirement.

a. A Participant, other than an elected or appointed member of the Governing Authority who is not an Eligible Employee, whose employment is terminated either voluntarily or involuntarily for any reason other than death, disability, or retirement after one (1) year or more of participation in the Plan will have a right to a Vested Retirement Benefit under which payment shall commence, at the option of the Participant, on the first day of the month coinciding with or next following his Normal or Early Retirement Date as prescribed in the Plan and shall be payable on the first day of each month thereafter during the life of the Participant, provided:

(1) That his next Employer and each successive Employer

until Retirement be a JMERS Employer who affords its Employees a Vested Retirement privilege as afforded in this Article VII, Section 3

(2) That the Participant must meet, through his Total Credited Service with all Employers prior to Retirement, the age, Service, and participation requirements for Normal or Early Retirement as provided for herein;

(3) That the amount of each Monthly Retirement Benefit shall be computed in the manner prescribed for Normal or Early Retirement in Article V herein, but based on his Final Average Earnings and Total Credited Service up to the Participant's date of termination of employment with the City;

(4) That in the event his final JMERS Employer allows Delayed Retirement beyond the Normal Retirement Date, that the benefit under this Article VII, Section 3, shall begin when the Participant retires and shall be computed as prescribed in Article V, Section 3.

b. A Participant, other than an elected or appointed member of the Governing Authority who is not an Eligible Employee, whose employment is terminated under any of the following conditions for any reason other than death, disability, or retirement shall be entitled to a Vested Right in his accrued Retirement benefits. Payment of such Vested Retirement Benefit shall commence on the first day of the month coinciding with or next following his Normal or Early Retirement Age at the option of the Participant and shall be payable on the first day of each month thereafter during the life of the Participant. The amount of each Monthly Retirement Benefit shall be computed in the manner prescribed for Normal or Early Retirement in Article V herein, but based upon his Final Average Earnings and Total Credited Service up to the Participant's date

of termination of employment with the City.

(1) A Participant whose employment is terminated voluntarily or involuntarily shall be entitled to a Vested Benefit if he has completed a minimum of ten (10) years of Credited Service in the Plan.

(2) A Participant whose employment is terminated involuntarily and without cause shall be entitled to a Vested Benefit if he has completed a minimum of five (5) years of Credited Service in the Plan. For the purpose of this condition, "cause" for dismissal shall mean negligence or inefficiency in performing the duties of the position held, unfitness to perform assigned duties, insubordination, or misconduct reflecting discredit on the City or upon the Governing Authority.

(3) A Participant whose employment is terminated voluntarily or involuntarily because he is disabled shall be entitled to a Vested Benefit provided he qualifies for Disability Retirement under the provisions of the Plan within one (1) year of said termination of employment.

Section 4. Termination of Tenure of Elective Office. A Participant who is an elected or appointed member of the Governing Authority and who is not regularly employed in the Services of the City shall be entitled to a Vested Right if he has completed a minimum of ten (10) years of Credited Service in the Plan.

## ARTICLE VIII. CONTRIBUTIONS

Section 1. City Contributions. The City shall make the necessary Contributions to fund this Retirement Plan. The amount of these Contributions shall be based upon the mortality tables adopted by the Board of Trustees, the benefits provided in the Plan, and the number of Participants and their respective ages, Earnings, and lengths of Creditable Service and such other factors as the Board of Trustees shall deem appropriate to properly fund this Plan. All Contributions by the City shall be used only for the benefit of the Participants, Beneficiaries, and Joint Annuitants. City Contributions shall be collected monthly by the Pension Committee and shall be remitted to JMERS on or before the fifth (5th) day of the month following collection.

Section 2. Participant Contributions. The Participants shall not be required to make any Contributions to the cost of this Plan.

## ARTICLE IX. PENSION COMMITTEE

Section 1. Creation and Composition. There is hereby created a Pension Committee which shall be composed of the following:

- Ad #3662*
- a. City Manager.
  - b. Two Class 1 Employees as defined in Article III, Section 2, elected annually by such Class 1 Participants.
  - c. Two Class 2 Employees as defined in Article III, Section 2, elected annually by such Class 2 Participants.
  - d. Two appointed members of the Governing Authority. The City Attorney and the Secretary shall not be empowered to cast a vote on issues before the Pension Committee. However, this section should in no way be construed to limit the power of the City Attorney or the Secretary to furnish advice to the Pension Committee or to freely engage in discussion of issues considered by the Pension Committee.

Section 2. Responsibilities. The Pension Committee shall have the following responsibilities.

a. In its dealings with JMERS or its duly appointed representatives the Pension Committee shall:

(1) Furnish all information with respect to enrollment of Employees, including elected and appointed members of the Governing Authority.

(2) Collect and remit to JMERS all required Contributions.

(3) Furnish JMERS, in accordance with its rules and regulations, all reports, and other records required to administer this Plan.

(4) Notify JMERS, in accordance with its rules and regulations, of all benefit elections made by Participants under this Plan and all matters regarding payment of benefits.

(5) Notify JMERS of the termination of Participating Employees and the vacation of elective office by elected and appointed

members of the Governing Authority.

b. In dealing with those persons participating or eligible to participate in the Plan, the Pension Committee shall:

(1) Be responsible for the enrollment of Eligible Employees and elected and appointed members of the Governing Authority.

(2) Handle distribution of all reports to Participants.

(3) Handle arbitration between the City and Participants in all matters regarding the Plan.

(4) Handle any notices of eligibility, benefits, available options, and any other notices required by this Plan, Contract, or rules and regulations of JMERS.

Section 3. Secretary. The Pension Committee shall designate, in writing, a secretary or other representative who shall have full authority to represent the Committee in all communications with JMERS and the City's Employees, including elected and appointed members of the Governing Authority. A copy of such written designation shall be forwarded to JMERS.

Section 4. Legal Assistance. The City Attorney or other attorney appointed by the Governing Authority shall furnish legal advice to the Pension Committee with respect to the Plan and the Committee's assigned responsibilities hereunder.



## ARTICLE X. BOARD OF TRUSTEES

Section 1. Powers. The powers of the Board of Trustees of JMERS as fixed by the Act of the General Assembly (Ga. L. 1965, p. 421, as amended) are hereby incorporated as part of the Contract. The City agrees that, in the administration of the Plan, it will comply with all rules and regulations adopted by the Board of Trustees under its authority as granted by said Act.

Section 2. Composition and Election. The composition of the Board of Trustees and the election of its members shall be as provided by an Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System (Ga. L. 1965, p. 421, as amended) and as may be provided in the bylaws of the Board of Trustees of the Joint Municipal Employees' Retirement System.

Section 3. Officers. The election of officers by the Board of Trustees shall be conducted as may be prescribed by an Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System (Ga. L. 1965, p. 421, as amended) and as may be provided in the bylaws of the Board of Trustees of the Joint Municipal Employees' Retirement System.

Section 4. Notice of Elections. The Board of Trustees shall provide through its bylaws for the giving of notice of elections, notice of any vacancy on the Board, the method or manner in which votes may be cast, any other matter necessary or incident to the election of members of the Board. The Board may also provide for a proxy vote, and may determine how, when, and in what manner voting by proxy may be had in accordance with an Act creating the Board of

Trustees of the Joint Municipal Employees' Retirement System (Ga. L. 1965, p. 421, as amended) and as may be provided in the bylaws of the Board of Trustees of the Joint Municipal Employees' Retirement System.

Section 5. Voting. The Board shall determine from its records the number of votes a member municipality is entitled to cast in any election in accordance with the formula set forth in an Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System (Ga. L. 1965, p. 421, as amended) and as may be provided in the bylaws of the Board of Trustees of the Joint Municipal Employees' Retirement System.

Section 6. Voting Representative for the City. The secretary, or other designated representative of the Pension Committee, shall be the official representative of the City insofar as matters pertaining to JMERS are concerned and is hereby designated as such official representative to cast the City's vote in any election of members of the JMERS Board of Trustees and in any other matters which the membership has the authority and responsibility for resolving unless the City notifies JMERS to the contrary in writing.

## ARTICLE XI. JOINT TRUST AGREEMENT

The Mayor is hereby designated and authorized to enter into and execute on behalf of the City, the Joint Trust Agreement (attached hereto as Appendix A) with the Board of Trustees.

## ARTICLE XII. CLAIMS AND LITIGATION

Section 1. Disputes. In the event of disagreement between a Participant and the City with respect to any rights, claims, or responsibilities under the Plan which cannot be resolved by the Pension Committee as provided under Article IX, the Participant may make an appeal regarding such rights, claims, or responsibilities to the Governing Authority. In the event that any such rights, claims, or responsibilities result in a suit or other legal action by a Participant, Beneficiary, Beneficiary Prior to Retirement, Beneficiary in Retirement, or Joint Annuitant, such action shall be defended in the same manner as other suits against the City. Any legal action on behalf of the City in regard to the Plan shall be first authorized by the Governing Authority and shall be conducted in the manner prescribed by the Governing Authority. JMERS shall have no responsibility to defend or pursue legal action arising under the Plan.

Section 2. Failure to Act. JMERS shall not be responsible for the failure of the City to perform any of its obligations under the Plan, including the duty to remit payments to JMERS, to provide necessary records concerning Participants and their Earnings to JMERS, or any other functions required of the City by the Plan, Contract, or by the rules and regulations of JMERS.

## ARTICLE XIII. AMENDMENT AND TERMINATION

Section 1. Amendment of the Plan. The Governing Authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the Plan; provided, however, that no such amendment shall:

a. Reduce the accrued benefits of any Participant or Beneficiary, or

b. Authorize or permit any part of the Trust Fund held by JMERS to be diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries, and

c. No amendment shall operate to deprive any Participant or Beneficiary of any rights or benefits irrevocably vested in him under the Plan prior to such amendment except that the Governing Authority may make any and all changes and modifications necessary to qualify the Plan or to keep the Plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto

d. Provided further that no amendment shall become effective until approved by JMERS.

Section 2. Termination of the Plan.

a. The City expects the Plan to be continued indefinitely but, of necessity, reserves the right to terminate the Plan and Contributions thereunder at any time by action of the Governing Authority. Upon receipt of written notice from the Governing Authority of termination of the Plan, JMERS shall prepare a list of all Participants showing for each, as of the date of Plan termination, the following:

(1) For each Retired Participant, Joint Annuitant, and Beneficiary in Retirement receiving payment of benefits, the amount

and terms of payment of such benefits.

(2) For each Terminated Participant entitled to a deferred benefit, the amount, commencement date, and terms of payment of such benefit.

(3) For each active Participant the amount of his accrued benefit.

b. JMERS, in accordance with its current rules and regulations, shall arrange for the liquidation of all assets held in the Trust Fund maintained in connection with the Plan and shall prepare a statement of the liquidated value of such assets. The Governing Authority, in its sole discretion, may direct JMERS to purchase from an insurance company an annuity contract or contracts which provide the benefits to which each Participant, Joint Annuitant, or Beneficiary in Retirement is entitled or to pay a lump sum to each Participant, Joint Annuitant, or Beneficiary in Retirement, such lump sum amount to be Actuarial Equivalent of the benefit to which such Participant, Joint Annuitant, or Beneficiary in Retirement is entitled.

c. JMERS shall then deduct from the assets total remaining expenses incurred or to be incurred by JMERS in behalf of the Plan. JMERS, pursuant to its rules and regulations, shall except as otherwise provided in this Section 2 then allocate the remaining assets for distribution in accordance with the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining Plan assets would be insufficient to provide the accrued benefits for the class in question, the remaining assets would be applied on a pro rata basis within that class, and all subsequent classes would receive no benefit.

CLASS 1 - Retired Participants, Joint Annuitants, or Beneficiaries in Retirement who are receiving payments on the termination date.

CLASS 2 - Participants delaying Retirement.

CLASS 3 - Participants eligible for Early Retirement.

CLASS 4 - Former Employees who are Terminated Participants.

CLASS 5 - All other Participants on a pro rata basis.

d. Upon distribution of the assets as specified above, the Plan shall be regarded as terminated and no Participant, Joint Annuitant, or Beneficiary in Retirement shall have any further rights or claim therein.

e. In the event of the termination or partial termination of the Plan during the first ten (10) years following the Effective Date, the allocation of Employer contributions with respect to each of the twenty-five (25) highest paid Employees on the Effective Date for whom an allocation would have provided a pension allowance in excess of \$125.00 a month at normal retirement date shall be limited to the highest of the following amounts, less any payments previously made out of Employer contributions:

(1) The contributions made by the Employer (or funds attributable thereto) which would have been applied to provide the benefits for such Employee if the Plan as constituted on the Effective Date had been continued without change; or

(2) \$20,000.00; or

(3) The sum of the following:

(a) Contributions made by the Employer (or funds attributable thereto) which would have been applied to provide benefits for such Employee under the Plan as constituted on the Effective

tive Date, if it had been terminated on such date; and

(b) An amount computed by multiplying the number of years for which the current costs of the Plan after the Effective Date have been met by [1] 20% of his average salary for the five (5) years prior to termination of the Plan or prior to retirement, if that be earlier; or [2] \$10,000.00, whichever is smaller.



## ARTICLE XIV. MISCELLANEOUS

### Section 1. Construction.

a. In the construction of the Plan all masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

b. The Plan shall be construed in accordance with the Laws of the State of Georgia.

c. In the event that any section, subsection, sentence, clause or phrase of this agreement shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses, or phrases of this agreement, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof.

The Governing Authority hereby declares that it would have passed the remaining parts of this agreement or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

Section 2. Non-Alienation of Benefits. None of the benefits, payments, proceeds, or distributions payable under the Plan shall be subject to the claim of any creditor of any Participant or to the claim of any creditor of any Beneficiary, or Joint Annuitant, hereunder, or to any legal process of levy or attachment by any creditor of any such Participant, Joint Annuitant, or Beneficiary; and no such benefits shall be in any manner liable for or subject to the

debts, liabilities, engagements, or torts of any Participant or Beneficiary; and neither any such Participant, Joint Annuitant, or Beneficiary shall have any right to alienate, commute, anticipate, transfer, encumber, pledge or assign any of the benefits, payments, proceeds, or distributions under the Plan. If any Participant or Beneficiary shall become bankrupt or attempt to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the Pension Committee, cease, and in that event the Pension Committee shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportion as the Pension Committee may think proper.

Section 3. Legally Incompetent. Any Participant, Joint Annuitant, or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Pension Committee receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event that the Pension Committee finds that any person to whom a benefit is payable under the Plan is unable to properly care for his affairs, or is a minor, then any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the spouse, a child, a parent, or a brother or sister, or to any person deemed by the Pension Committee to have incurred expense for such person otherwise entitled to payment. In the event a guardian

of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian provided that proper proof of appointment is furnished in a form and manner suitable to the Pension Committee. Any payment so made shall be a complete discharge of liability therefor under the Plan.

Section 4. Benefits Supported Only By Trust Fund. Any person having any claim under the Plan will look solely to the assets of the Trust Fund for satisfaction. In no event will the City, or any of its employees or agents, be liable in their individual capacities to any person whomsoever, under the provisions of the Plan or of the Joint Trust Agreement.

Section 5. Discrimination. The City, through the Pension Committee, shall administer the Plan in a uniform and consistent manner with respect to all Participants and shall not permit discrimination in favor of supervisory or highly paid Employees, elected or appointed members of the Governing Authority, the chief legal officer or any associate legal officer of the City, or any municipal officer elected or appointed to preside over the court of said City.

Section 6. Limitation of Liability; Legal Actions.

a. It is expressly understood and agreed by each Employee who becomes a Participant hereunder that, except for its or their willful neglect or fraud, neither the City, the Pension Committee, nor the Board of Trustees shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such Participant hereby releases the City, all its Employees

and agents, the Pension Committee, and the Board of Trustees from any and all liability or obligation.

b. To any action or proceeding involving any rights under the Plan or the proper administration thereof, the City and the Pension Committee shall be the only necessary parties and no Participant, or his Beneficiary, Joint Annuitant, or any other persons having or claiming to have an interest in the Plan shall be entitled to any notice or process. Any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest in the Plan.

Section 7. Claims. Any payment to a Participant, Joint Annuitant, or Beneficiary, or to their legal representatives, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Pension Committee or the City, either of which may require such Participant, Beneficiary, Joint Annuitant, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Pension Committee or the City, as the case may be.

Section 8. Application for Benefits. Any provision in the Plan to the contrary notwithstanding, benefits may become payable only after the Participant, Joint Annuitant, Beneficiary, or their legal representative, whichever is applicable, has made written application therefor to the Pension Committee. Benefits for which no such application has been made within three (3) years following the date of entitlement to such benefits shall be forfeited. In no event

shall any forfeitures be applied to increase the benefits any Participant or Beneficiary would otherwise receive under this Plan.

Section 9. Intent. The City hereby agrees to abide by the bylaws and the rules and regulations of the Board of Trustees of JMERS in all matters pertaining to the operation and administration of the Contract. It is intended that the Act creating the Board of Trustees of JMERS, the bylaws of the Board, the rules and regulations of the Board, and this Contract are to be construed in harmony with each other. But in the event of a conflict in the provisions of any of the foregoing, they shall govern in the following order:

- a. The Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System, Ga. L. 1965, p. 421, as amended;
- b. The bylaws of the Board;
- c. The rules and regulations of the Board;
- d. This Ordinance and Contract.

Section 10. Fraud, Embezzlement, Theft, and Dismissal for Cause. In the event the Employer shall receive prior to a Participant's actual Retirement date, written confession by such Participant, or proof satisfactory to the Governing Authority that such Participant has committed or has been convicted of having committed an act of fraud, embezzlement, or theft in connection with his duties or in the course of his employment with the City, or in connection with the Plan, his participation in the Plan shall be forthwith terminated; and any vested interest that such Participant may have in the fund shall be forfeited.

Section 11. Errors in Computation of Benefits. Any overpayments or underpayments from the Trust Fund to a Retired Participant or to a

Beneficiary caused by errors of computation shall be adjusted with interest at the rate of five percent (5%) per year compounded annually. Overpayments shall be charged against Retirement payments next succeeding the correction. Underpayments shall be made up from the Trust Fund.

**ARTICLE XV. . REPEALER CLAUSE**

**All Ordinances or parts of Ordinances in conflict herewith are hereby expressly repealed.**

IN WITNESS WHEREOF, the City has caused its Seal and the Signatures of its authorized officers to be affixed this 11th day of June, 1975.

Attest:

Robert M. Gueck  
City Clerk

(SEAL)

City of Marietta, Georgia

Dana Enstrom  
Signature  
Mayor

W. K. Beck  
Title  
Signature  
Councilman  
Title

Thomas W. Holland  
Signature  
Councilman  
Title

Thomas W. Holland  
Signature  
Councilman  
Title

Thomas W. Holland  
Signature  
Councilman  
Title

Approved as to Form  
and Substance:

Lynn Downer  
City Attorney

Lynn Downer  
Signature  
Councilman  
Title

Lynn Downer  
Signature  
Councilman  
Title

The terms and conditions of the foregoing Ordinance and Plan are hereby adopted and agreed to.

IN WITNESS WHEREOF, the Board of Trustees of the Joint Municipal Employees' Retirement System has caused its Seal and the Signatures of its duly authorized officers to be affixed this 15th day of October, 1975.

Attest:

W. E. George  
Secretary

(SEAL)

Board of Trustees  
Joint Municipal Employees'  
Retirement System

John A. Tard  
Chairman



APPENDIX A  
to  
The Retirement Plan of  
The City of Marietta , Georgia

JOINT TRUST AGREEMENT

This Agreement between the City of Marietta , Georgia, Settlor (herein called the "City"), and the Board of Trustees of the Joint Municipal Employees' Retirement System, a public corporation established by Ga. L. 1965, p. 421, as amended (herein called the "Trustee").

WITNESSETH:

WHEREAS, the City of Marietta , Georgia desires to provide Retirement Benefits for the sole and exclusive benefit of its Employees, and for such purpose has heretofore on the 11th day of June , 19 75 , adopted an Ordinance providing for the terms and conditions of such benefits, all in accordance with the above stated Act, and which has been accepted by the Trustee and is herein referred to as the "Contract"; and

WHEREAS, such Contract provides for the execution of this Trust Agreement with the Joint Municipal Employees' Retirement System;

NOW, THEREFORE, in consideration of the mutual promises, purposes, and trusts herein contained and contained in said Contract, it is mutually agreed as follows:

## ARTICLE I. TRUST FUND

### Section 1.

a. Payments to the Trustee shall be remitted from time to time in accordance with the terms of said Contract and said moneys, which are the subject of this Trust, shall be held, administered, invested, reinvested, and distributed, all in accordance with this Trust instrument.

b. The Trustee's responsibilities shall be as fixed by the said Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System, by this instrument, and by the said Contract. The Trustee is specifically held harmless by the City from any liability to any Participating Employee for benefits under the City's Plan, but shall be responsible only to the City for the proper administration of the moneys paid to the Trustee and payment of such moneys as directed by the City or its Pension Committee.

Section 2. It is the intent and purpose of this agreement that this Trust be one of several trusts executed under authority of an Act creating the Board of Trustees of the Joint Municipal Employees' Retirement System. It is understood by the parties to this Trust Agreement that it be similar in nature to other trust instruments executed with the Board of Trustees of the Joint Municipal Employees' Retirement System, and the Trustee is hereby authorized to co-mingle assets of this Trust Fund with assets of other such Trust Funds of a similar nature in a common fund known as the JMERS Investment Fund.

## ARTICLE II. POWERS

Section 1. The Trustee may place assets held by it with banks or trust companies having corporate trust powers and authorized to do business in the State of Georgia, and to authorize any such bank or trust company to invest and reinvest such assets for its account, subject to the provisions relating to investments by domestic insurance companies under the Laws of Georgia. The Trustee may employ such banks and trust companies as agents for the keeping of records and the receipt and disbursement of moneys held by or due the Trustee.

Section 2. The Trustee may place assets held by it with insurance companies authorized to do business in the State of Georgia for the purpose of investment at guaranteed or anticipated rates of interest. The Trustee may purchase insurance contracts on the lives of Participating Employees and may purchase annuity contracts to provide Retirement benefits to Participating or Retired Employees and pay all premiums thereon. The Trustee may employ such insurance companies to provide actuarial advice and to provide services in the keeping of records and the receipt and disbursement of moneys held by or due the Trustee.

Section 3. The Trustee is authorized to invest and reinvest assets held by it in any investments which are legal investments for domestic insurance companies under the Laws of Georgia, or which may become such legal investments by future amendment to the applicable laws, and to purchase, acquire, hold, lease, sell and convey real and personal property.

### ARTICLE III. MANAGEMENT OF TRUST FUND

Section 1. The Trustee shall maintain:

- a. A Contribution account for the City, to which shall be credited its Contributions and Interest, if any, under the Plan, and
- b. Such other accounts, if any, as may be reasonably required in the discretion of the Trustee.

Section 2. There shall be charged against the above accounts all payments made therefrom pursuant to the terms of the Plan and the rules and regulations of JMERS.

Section 3. Any other payments of expenses required to be paid by the Trustee for the administration of this Plan shall be charged to the JMERS Administrative Account.

Section 4. The Trust Fund is the interest of the City and its Participants in the JMERS Investment Fund shall be represented by units which shall constitute equal interest in such fund. The Trustee may, from time to time, establish new or additional funds and separate and place therein new Contributions rather than adding to the existing fund, and units therein shall represent equal interest in the respective funds.

Section 5. The Trustee shall prescribe in its rules and regulations the method of valuation of assets.

#### ARTICLE IV. VALUATION OF FUND

Section 1. The Trustee shall determine the principal and interest of the Trust Fund on periodic valuation dates, established by the Trustee, but at least each twelve (12) months. Interest shall be determined by the Trustee in accordance with an established method which it may prescribe in its rules and regulations. The Interest shall be added to and become a part of the principal of the Trust Fund on such valuation date as established by the Board, but at least each twelve (12) months.

Section 2. The principal value on any valuation date of each unit into which the fund is divided, as hereinbefore provided, shall be determined by dividing the then principal value of the fund by the number of units into which the fund is then divided.

## ARTICLE V. AUDIT OF FUND

At least once during each period of twelve (12) months, an audit shall be made of the JMERS Investment Fund and JMERS Administrative Fund by independent public accountants responsible only to and appointed by the Trustee. The accountants appointed shall include in each audit a statement of the accounts of the Trustee, a list of investments, and other assets comprising the JMERS Investment Fund as of the date of the audit, which shall mean the last day of the period covered, and shall show the valuation placed on each item in accordance with the valuation method adopted by the Trustee, as of the date of the audit, a statement of charges, sales, and any other investment charges and of all Interest and disbursements since the last audit, and appropriate comments as to any investment in default as to principal or interest. Promptly upon receipt by the Trustee of each audit, the Trustee shall send notice to each member municipality to whom a periodic regular accounting would ordinarily be rendered, that the report is available and that a copy thereof would be furnished upon request.

## ARTICLE VI. ANNUAL REPORT

The Trustee shall file with the City a written annual report showing pertinent transactions affecting its respective account since the last previous such report. Within ninety (90) days of the receipt of such report, the City may file written objections with the Trustee, with respect to any transaction regarding its account as shown in such report.

## ARTICLE VII. EXPENSES

The City hereby agrees to pay, in addition to its Contributions, and the Trustee is authorized to charge the City, an administrative fee based upon a uniform schedule of expense charges adopted by the Board of Trustees and applicable to all member municipalities. It is understood that such schedule may be amended from time to time by the Board, but the Board shall base such schedule on the total amount of administrative expenses necessary to administer the System, based on a realistic budget adopted and approved by the Board at periodic intervals.



## ARTICLE VIII. INVESTMENT LIMIT

Funds deposited by the Trustee with any one bank or trust company shall not exceed twenty-five percent (25%) of the combined capital and surplus of such bank or trust company. Such bank or trust company shall give bond or pledge sufficient federal or municipal securities to secure the deposit of the Trustee.

## ARTICLE IX. DISBURSEMENTS FROM TRUST FUND

Section 1. Upon written direction from the City or Pension Committee, the Trustee shall draw checks as designated by the City or Pension Committee, and deliver such checks in such manner and in such amounts and at such time as the City or Pension Committee shall direct.

Section 2. The Trustee shall not be liable for any action taken at the direction of the City or Pension Committee. If action by the Trustee can reasonably be taken only after receipt of direction from the City or Pension Committee, the Trustee may request, in writing, direction from the City or Pension Committee, and the Trustee shall not be liable for failure to act pending the receipt of such direction.

Section 3. The Trustee shall not be responsible for the failure of the City to perform any of its obligations under the Plan, including the duty to remit payments to the Trustee, to provide necessary records concerning Participating Employees and their Earnings to the Trustee or any other procedures required by the rules and regulations of the Trustee.

Section 4. The Trustee shall not be responsible to the City or any Participating Employee for any obligations beyond the extent of the assets on hand for the City or Participating Employees. No rights shall accrue as against the Trustee or the Trust Fund in the event of voluntary or involuntary termination of the Plan by the City.

## ARTICLE X. TERMINATION

If the City does not make a Contribution within ninety (90) days of the due date of said Contribution, and if in the opinion of the Trustee such failure jeopardizes the accruing rights of Participating Employees, the Trustee shall notify each Participating Employee in writing at his last known place of residence of the situation. Under such conditions, the Trustee shall continue to manage the Trust Fund, unless the City exercises its termination right, so long as the assets attributable to the City are sufficient to cover the Joint Municipal Employees' Retirement System's expenses and meet the cost of pensions as pensioners retire. When the moneys in the Trust Fund are no longer adequate to meet these obligations, the Plan shall automatically terminate in accordance with Article XIII of the said Plan. The City may terminate this Trust Agreement at any time in accordance with Article XIII of the said Plan.

## ARTICLE XI. WITHDRAWAL OF TOTAL TRUST FUND

On any date, the City may direct the Trustee in writing to transfer all or any portion of the amount of the Trust Fund subject to withdrawal to any other funding medium. From the date of receipt of such request, the Trustee shall, within a period not to exceed six (6) months, return at least one-twelfth (1/12) of the amount subject to withdrawal, less applicable expenses, and shall continue returning one-twelfth (1/12) of such Trust Fund on the first day of each month thereafter until the total amount subject to withdrawal is returned. The value of the amount subject to withdrawal shall be determined in accordance with applicable rules and regulations of the Trustee. When the total amount of the Trust Fund subject to withdrawal has been paid in accordance herewith, this trust shall terminate and the Trustee shall have no further responsibility hereunder. Such transfer shall constitute an amendment to the Plan and as such shall be subject to the provisions of Article XIII of said Plan.